

MINISTRY OF TREASURY, ECONOMICS
AND INTERGOVERNMENTAL AFFAIRS

LOCAL GOVERNMENT DIVISION

BULLETIN NO: 7

DRAFTING MUNICIPAL BY-LAWS

THE HONOURABLE W. DARCY McKEOUGH

TREASURER OF ONTARIO AND
MINISTER OF ECONOMICS AND
INTERGOVERNMENTAL AFFAIRS

RENDALL DICK, Q.C.

DEPUTY TREASURER OF ONTARIO AND
DEPUTY MINISTER OF ECONOMICS
AND INTERGOVERNMENTAL AFFAIRS

MAY 1978

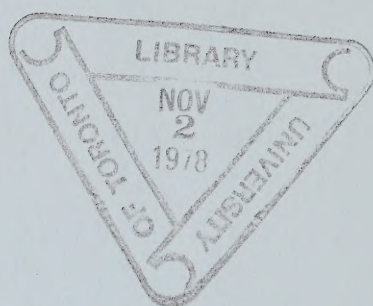



TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
STATUTORY PROVISIONS FOR BY-LAWS	3
RESOLUTION OR BY-LAW?	3
AUTHORITY	4
PROCEDURE	4
READINGS	5
COMPONENTS OF THE BY-LAW	7
The Corporate Title	8
The By-law Number	8
The Précis	8
The Authorizing Preamble	9
The Recital Preamble	10
The Enactment Clause	10
The Operative Clauses	11
The Schedule Clause	11
The Penalty Clause	12
The Repeal Clause	13
The Approval Clause and the Effective Date ..	14
The Dating of Various Readings and Signing ..	15
LEGAL REQUIREMENTS	15
Legality	15
Validity	17
Recording, Registration and Promulgation	19
Format Considerations	20

INTRODUCTION

This bulletin discusses the major elements to be considered in drafting a by-law.

The material is designed to assist the clerk in the preparation of a by-law but the value of input from a solicitor should not be overlooked.



Digitized by the Internet Archive
in 2024 with funding from
University of Toronto

<https://archive.org/details/31761120623095>

STATUTORY PROVISIONS FOR BY-LAWS

"Except where otherwise provided, the jurisdiction of every council is confined to the municipality that it represents and its powers shall be exercised by By-law."

In these words, section 241 of The Municipal Act lays down two of the most important features of the municipal by-law. When read in conjunction with section 9 of the Act, which states that "the powers of a municipal corporation shall be exercised by its council", it is clear that the by-law is a most important instrument in the exercise of the authority of a municipal government. Without a by-law nothing of any great significance can legally be done by the municipal council or by the staff of the municipality.

The second thing that section 241 of the Act points up is that the by-law is a law that only affects the local (or county or regional) community. Generally, that means the by-law is only to address itself to matters within the boundaries of the municipality (although there may be exceptions as in the case of joint fire agreements or waste-disposal sites). Indeed, the word by-law comes from the old English word meaning a law of the "bye", which was a hamlet or township.

RESOLUTION OR BY-LAW?

The question most often asked is when should a by-law be used and when will a resolution suffice. Some sections of the statutes state clearly that a resolution is sufficient in some matters -- others do not make the distinction.

An argument has been put forward that the requirement to use a by-law to exercise a council's statutory powers only applies to The Municipal Act, as there is no similar clause (section 241) in any other act.

The answer, if there is one, lies in the interpretations made by the courts over the years. Generally the courts suggest that in matters of administrative detail a resolution is sufficient; that is, a decision on a specific administrative matter not likely to recur. By-laws are required where the power exercised is applicable on a continuing basis and applicable to everyone, such as a licensing by-law.

The complexity of this issue is such that if there is any doubt as to the use of a by-law or a resolution, council should seek the advice of a solicitor or, failing that, be safe and use a by-law.

AUTHORITY

As is the case in any area of local government, by-laws can only be passed when The Municipal Act or some other general or special act gives a municipality the authority to do a particular thing. (Occasionally, when no specific authority can be found, a private act of the Legislature may be sought to allow a council to pass a by-law.) It is suggested that municipalities not read apparent statutory authorizations too broadly. (Reference was made to this matter in a previous bulletin titled "The Municipality and the Law".)

The courts have always given a fairly narrow definition to municipal powers. For example, section 242 of The Municipal Act says in part that councils "may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality ... as may be deemed expedient and are not contrary to law." In spite of this apparently broad authority, the courts, through various decisions, have been more restrictive in interpreting the scope of this part of the section. A council should only use this section as authority for an action after consultation with its solicitors.

PROCEDURE

The municipal council must ensure that it follows proper procedures and is consistent in enacting by-laws. The council must be in session. There must be a quorum in attendance and voting. The meeting must be either a regular meeting of council (or a reconvened regular meeting that had been properly adjourned to a specific time) or a special session that, when called, cited the consideration and passing of the by-law as one of its purposes. No by-law may be passed in Committee-of-the-Whole.

A person who has a potential conflict of interest should not discuss or vote on a by-law and, if the presiding officer has a conflict, the chair should be relinquished to an acting presiding officer for purposes of debate and voting. The Municipal Conflict of Interest Act, 1972 does permit the quorum to be reduced from its usual number in certain instances (see section 1(5) of that Act). (A previous bulletin has been issued entitled "The Municipal Conflict of Interest Act".)

While there is nothing to prevent a by-law being passed on the day it is presented to council, council should observe proper and usual procedures in introducing such a by-law. If the municipality's customary procedures or its procedure by-law require advance notice of the introduction of a by-law, that notice must be given in each instance. Naturally, some by-laws cannot be passed at one sitting because of statutory restrictions and are presented for approval "in principle" only (first and second reading). Among the latter type would be drainage by-laws and construction/debenture by-laws.

The procedures followed by municipal councils are generally modelled on parliamentary procedure, although, as is the case with the Legislature and the House of Commons, these procedures are not laid down in any statute. They are, however, recognized as being part of the law-making process. (The courts will look unfavourably on irregular procedures that have the effect of making possible an action that might not otherwise have been taken, using the municipality's normal procedures.)

READINGS

The practice of giving by-laws three "readings" is a case in point. The concept of giving proposed laws or by-laws (or "bills") three readings is directly related to parliamentary practice. While in earlier times bills were actually read before the House on three occasions for the benefit of those assembled, the advent of the printing press and universal literacy has made such a practice unnecessary. Given the volume, length and complex wording of contemporary legislation, the disappearance

of this practice is obviously a blessing. The term "reading" now is taken to mean a "stage of consideration", so that a bill "passing a reading" or "being read" can be taken to mean that it has successfully passed a stage of consideration by the law-making body. While municipal councils outside city municipalities do not usually make use of the term "bill", the resolution giving a proposed by-law a reading has the same effect as passing a bill through a reading -- the term "bill" in a municipal context refers to a proposed by-law.

As mentioned, each reading of a proposed by-law signifies a stage of consideration.

"First reading" indicates approval for purposes of setting the matter before the law-making body for consideration. It does not indicate agreement with the proposed by-law. In the Legislature, for example, almost all bills are routinely given first reading, no matter how unpopular they are or how unlikely their passing. (The municipal equivalent would be a councillor seconding a motion for purposes of permitting discussion, even though he does not intend to vote for the motion.)

At the municipal level, since the direction to prepare a by-law is generally given by resolution, the clerk usually assumes that agreement in principle is implied in that resolution and therefore the clerk drafts "reading" motions to incorporate both first and second readings.

"Second reading" indicates approval in principle of the proposed by-law. The by-law is now a statement of council policy but does not yet have legal force. It is at second reading that any desired amendments should be made. In addition to the general reference to the amendment in the "reading" resolution, amendments made to by-laws at second reading should be made in detail by resolution and the resolution recorded in the minutes. At second reading, the by-law may be submitted for O.M.B. approval, or placed before a drainage Court of Revision, or notice of proposed road closing, alteration, etc., published.

Third and final reading is the stage at which the by-law comes into force and takes effect unless the by-law specifies otherwise. The resolution authorizing third and final reading should cite the date, the by-law number to be affixed and the instruction for the head of council and clerk to sign and seal (and register, if appropriate).

It is possible to amend a by-law after second reading, provided the amendment is of a minor nature and provided the by-law has not received any statutory approvals. If this is done, the amendment should be referred to in the resolution approving third reading and final passing of the by-law.

COMPONENTS OF THE BY-LAW

The typical by-law is made up of a number of components or parts. From "top to bottom" they are as follows:

- the corporate title;
- the by-law number;
- the précis;
- the authorizing preamble;
- the recital preamble;
- the enactment clause;
- the operative clauses;
- the schedule clause;
- the penalty clause;
- the repeal clause;
- the approval clause;
- the effective date clause;
- the dating of various readings and signing.

Not all by-laws contain all of these elements, of course, but in any one year, all of these components will be contained in one or more by-laws passed by council.

Let's look at these elements individually.

The Corporate Title

As might be expected, this refers to the proper name of the municipal corporation. Unless the municipality has been incorporated by special act or in some other manner, the title should read in the form provided in section 8 of The Municipal Act; e.g.: The Corporation of the Township of Ontario.

The By-law Number

Although it is unusual for a by-law to be defeated after it has been introduced, it is not uncommon for by-laws to be passed in a different sequence than that in which they were introduced. For both reasons, many municipalities affix a sequential number to a by-law only after it is finally passed. (Some larger municipalities identify proposed by-laws by "bill number" until they are finally passed.) A sequential by-law number also enables an easy means of future reference. This practice may present problems if some action has to be taken after second reading but, generally, the use of the précis and date of second reading (and its bill number, if applicable) can avoid any confusion. It is also a good practice to use prefix or suffix numbers or letters to further identify the time of passing and the nature of the by-law. A two-digit code, such as "78", added to the beginning or the end of the sequential number can be used to indicate the year in which the by-law was passed. Similarly, the use of a code number or letter may help to identify all by-laws of a certain class for future reference (e.g. "L" for licensing, regulating, governing and prohibiting by-laws; "D" for drainage by-laws; "R" for restricted-area (zoning) by-laws; et cetera). Thus a by-law numbered "77-106-L" would be the 106th by-law passed in 1977 and it dealt with licensing.

The Précis

The précis is a capsulized summary of the by-law's contents that is used for easy identification and that is incorporated into the by-law index. While

it is of no legal effect, the précis should follow closely the wording used in the section of the act under which the action is being taken. The précis is often the means by which a by-law is identified in written form prior to its passing and numbering, as for example, in the "reading" motions. An example of a précis that would likely be found at the beginning of a procedural by-law is:

A by-law to govern the procedure of Council, the calling of meetings, the conduct of members.

The Authorizing Preamble

Since actions should be taken based on specific legislative authority, the by-law should cite in either specific or general terms the authority under which the action is being taken.

It is a matter of some debate as to whether actual section numbers should be cited as an authority or only the enabling act itself. Quoting section numbers eliminates any confusion over the powers being utilized and helps to establish that the by-law is limited in its scope (a necessary condition for any judicial test of "certainty" and "intra vires"). It would be less confusing, too, if no one by-law attempted to undertake dissimilar actions or to proceed under a variety of unrelated authorities (unless the by-law in question is a "municipal code" under section 242a of The Municipal Act.) On the other hand, if there is any uncertainty over the exact powers being employed or if the by-law is dealing with a number of closely related matters for which there are numerous authorities, only a general reference to the enabling legislation might be given.

In either case, the wording used to describe the powers being exercised should be drawn as closely as possible from the section or sections under which the by-law is presumed to be authorized.

Finally, in citing legislation, a full description of the enabling statute (or statutes) should be incorporated. The most common errors in citing legislation are as follows:

- (a) not using the full proper name of the act in question (e.g. saying "the Ontario Building Code Act" instead of "The Building Code Act, 1974");
- (b) citing a predecessor or an outdated version of an act (e.g. "The Drainage Act" instead of "The Drainage Act, 1975");
- (c) not fully describing the act when first reference is made to it and failing to take note of any portion of the authority being exercised that is authorized by regulation rather than by statute (e.g. "pursuant to The Education Act, 1974, as amended, and to Regulations thereunder");
- (d) where section numbers are cited, failing to note the fact that the act is "R.S.O. 1970, chapter 284", or "S.O. 1972, chapter 142" in the initial reference to the act.

The Recital Preamble

The recital preamble consists of one or more preliminary clauses in the by-law, after the legislative authority has been cited, that outlines why the by-law is being passed and that the requisite procedures have been followed.

The recital preamble may prove particularly useful in future years in explaining what council had in mind in passing the by-law and, especially, that any required steps (notices, hearings, reports to be considered, et cetera) were followed. Reference should always be made in the recital preamble to any statutory petitions that were received and gave rise to the by-law.

The Enactment Clause

Since only the council may pass a by-law on behalf of the municipal corporation, it is the council that enacts the by-law's operative provisions. Recognizing that the council is one body, not a collection of individuals, all references to council should be in the third person singular.

The Operative Clauses

The operative clauses are those portions of the by-law that carry out the intentions of the council. Since operative clauses vary widely according to their purpose, it is possible to make only general observations on them. Among the basic requirements, however, are the following:

1. If the by-law grants authority for an officer or agent to do something, the terms and conditions of his or her discretion must be clearly laid down, either in the by-law or in a policy passed by council pursuant to the by-law. The council cannot delegate its authority to someone absolutely in most cases, because the by-law is itself a "subordinate" piece of legislation, that is, subordinate to the enabling legislation.

2. If dates are to be specified and the by-law will continue in force from year to year, the wording should be in a manner to allow for holidays, Sundays, non-business days, et cetera.

Similarly, if a by-law authorizes continuing contributions, such as to an intermunicipal agreement, use should be made of proportions of equalized assessment or percentages, not dollar amounts.

3. In determining remuneration or fees, the by-law may wish to provide that they be set from time to time by resolution of council rather than having a dollar amount fixed in a by-law.
4. If possible, the wording used in operative clauses should follow closely the wording used in the statute, provided such wording is clear.

The Schedule Clause

In any area of legislation it is sometimes cumbersome to incorporate essential information into the body of the by-law. Included under this category are such

things as metes-and-bounds property descriptions, schedules of payments or levies, lists of authorized persons, and so on. These are frequently added to the by-law as schedules. The schedule is headed up in a fashion similar to the by-law, citing corporate title and the by-law and schedule numbers. (The O.M.B. may insist on the wording "This is Schedule "A" to By-law 1086 passed the _____ day of _____ 1978." and the signatures of the Head of Council and Clerk.)

The body of the by-law should contain reference to the schedule, what it deals with, that it is attached and that it shall form part of the by-law.

If it is desired to amend a schedule, an amending by-law should be passed substituting a new schedule and then a note should be made on the former by-law and schedule. The old schedule should not be removed or destroyed but simply noted as being no longer in effect.

The Penalty Clause

In passing regulatory by-laws, it is generally advisable to provide for enforcement and penalties. In the absence of such penalty provisions, either it is necessary to get a court order to enforce the provisions, or else there may be no effective means of enforcing the provisions of the by-law at all. Although many provisions in The Municipal Act and in other acts carry with them authority to set penalties or assess fines, there is also a general penalty provision in section 466 of The Municipal Act. There are, in addition, general provisions for compelling compliance with certain classes of by-laws and these are outlined in section 469 of the Act.

Each by-law of a regulatory nature that is passed should contain a penalty provision based on section 466 and an enforcement provision based on section 469, if applicable. Alternatively, if the municipality has passed a general by-law under section 466, reference should be made to that by-law in a penalty clause.

The Repeal Clause

Many by-laws will deal with matters with which other by-laws have already dealt. This may happen for two reasons: the new by-law may be a decision by council to substitute a new regulation, authorization, appointment, or whatever, for one enacted in a previous by-law; or the new by-law may in some way change the manner in which a previous by-law operates, such as limiting its effect, altering its method of operation, setting a new schedule of fees or times, or replacing one officer with another.

In the case where the whole of a previous by-law is no longer to be in effect, the new by-law should have a "repeal clause" that provides for the complete repeal of the previous by-law. Wording should, of course, make reference to the old by-law's number and its date of passing. It may also be wise to record the précis of the old by-law after the by-law number is cited and before its date of passing is mentioned. In the case of regulatory by-laws, or by-laws establishing procedures or restrictions, it may also be wise or even necessary to outline which by-law is to govern matters in process. In addition, it should be clear whether the new by-law will require any additional actions on the part of those who may have successfully complied with the by-law now being repealed.

Alternatively, where the new by-law affects a previous by-law or by-laws but the earlier by-laws are still to continue in force, a more generalized wording should be sought for the repeal clause. Bearing in mind that, in addition to by-laws, council may act by resolution or by adopting reports, the repeal clause should provide: "Where the provisions of any other by-law, resolution or action of council are inconsistent with the provisions of this by-law, the provisions of this by-law shall prevail."

The generalized wording in the previous paragraph should not be used if it is possible to cite and repeal the specific by-law(s), resolutions, rules, et cetera.

The Approval Clause and the Effective Date

Certain by-laws require some form of statutory approval, the most frequent being the approval of the Ontario Municipal Board. Reference should be made in any by-law to the necessity of receiving such approvals before the by-law takes effect. Depending on the circumstances, it may be possible to have the by-law deemed in force on the date of its final passing, even though the approval may be granted sometime afterwards. (Restricted-area (zoning) by-laws frequently make use of this provision.) In such cases, a clause stating: "That this by-law shall come into force and effect on the date of its final passing, subject to the approval..." may be utilized. If this format is not appropriate, or if it is not possible to have a "retroactive" application, the clause may read: "That this by-law shall come into force and take effect on the date of its approval by..." or "That this by-law shall come into force and take effect on the date of its final passing, subject to the approval of..... first having been obtained".

Where a by-law requires a vote of the electors or an application to dispense with the vote is to be made, the clause should be worded in terms of a direction to conduct the vote or make the application to dispense with the vote as the case may be.

In other cases, where approvals are not required, the effective date of a by-law can be set as the date of its final passing or set at some future date that is named in the by-law. The authority under which a by-law is passed will give an indication of whether the by-law may be applied retroactively or whether it applied only from the date of passing of the by-law onwards. This point may be significant in the case of a by-law that regulates, governs, prohibits or zones activities, land uses, trades and businesses, et cetera. The effective-date clause should make clear the scope of the by-law and the date of its coming into effect for purposes of enforcement. Regardless of the specific legislative requirements, it is good policy to afford a hearing to individuals or classes of people whose rights will be affected by a proposed by-law, prior to the by-law being finally passed. The Statutory Powers Procedure Act, 1971, may apply in some cases.

The Dating of Various Readings and Signing

After the various operative and other clauses of the by-law, the date(s) upon which the by-law received first and second readings should appear where procedure calls for such readings, followed by the date of its final passing. The date and authority for any approvals received should also be shown on the face of the by-law (e.g. O.M.B. order number and date for a debenture by-law; auditor's signature, licence number and date in case of a destruction-of-records by-law; any ministerial approvals, such as Minister of Transportation and Communications; and so on).

The signature of the presiding officer of the meeting at which the by-law was finally passed (which is normally the head of council but could be an acting presiding officer appointed under section 194, 195 and 209 of The Municipal Act) should be affixed at the time the by-law is passed. Then the clerk (or acting deputy clerk) should affix his name and, as soon as possible thereafter, the seal of the corporation. It should be noted that the presiding officer is, by law, required to affix his signature, regardless of his feelings about the by-law.

LEGAL REQUIREMENTS

A by-law is a legal document, and the balance of this bulletin touches on some of the legal problems that can arise. This material is offered strictly for the information of the council and staff in drafting and enacting by-laws. The municipality should seek the advice of a solicitor on any legal questions that might emerge.

Having a by-law passed in the usual manner by council and receiving the requisite approvals does not, alone, guarantee that the by-law is legal, valid and binding.

Legality

In order for a by-law to be legal, it must, among other things, be capable of passing the following tests:

- (a) certainty - meaning the provisions of the by-law, including how they are to operate, are clear and unambiguous;
- (b) "intra vires" - meaning that the by-law is doing things that are clearly within council's powers to do; that is, for which some form of legislative authority can be cited;
- (c) discrimination - meaning that the by-law does not discriminate in its treatment of individuals or classes of individuals except in a manner contemplated in the enabling legislation;
- (d) good faith - meaning that council is passing the by-law with good intentions and not to serve the personal ends of its members; and,
- (e) procedural propriety - meaning that the by-law has observed all the statutory preconditions and has not left any matters to be dealt with in an arbitrary manner.

Item (e) may require further explanations.

As a constitutionally subordinate legislative body, council cannot freely delegate its authority to make decisions, either to committees or to officials. All council can delegate is the power to carry out decisions with some degree of discretion. The distinction is an important one. For example, an official or committee can be given the authority to decide whether a person or property meets the criteria set by council in some form of regulatory by-law. Council cannot, however, delegate to an official or committee its authority to decide what those criteria should be. While in practice technical criteria may be developed by staff to be administered by staff, the authority to use such criteria must always have council's approval.

It is important to note that the bases upon which a by-law may be found to be illegal does not include "unreasonableness". Section 241 of The Municipal Act

referred to at the beginning of this paper also provides that:

"A by-law passed by a council in the exercise of any of the powers conferred by and in accordance with this Act, and in good faith, shall not be open to question, or be quashed, set aside or declared invalid, either wholly or partly, on account of the unreasonableness or supposed unreasonableness of its provisions or any of them."

As a rule, a by-law may be attacked on the basis of how it was passed but not on the basis of what it proposed to do, provided the power to do it was in council's hands.

Validity

To render a by-law valid, the normal council procedures should be followed. In addition, it may also be necessary to go through a number of preliminary steps required by the governing statute. The legislation governing local improvements, road widenings, drainage projects, expropriations and various other undertakings require the council to follow a number of procedural steps before finally passing a by-law.

There are specific procedural requirements for dealing with money by-laws which, if not followed, could render the by-laws invalid. Section 293 of The Municipal Act provides in part that the municipality:

"... shall not incur any debt the payment of which is not provided for in the estimates for the current year unless a by-law of the council authorizing it has been passed with the assent of the electors.

Despite this broad-ranging restriction, municipalities have two effective means of proceeding without a vote of the electors every time council incurs a debt. The first is, of course, that a debt repayable in the term of council is exempt as are the list of undertakings under section 293(3). The second is the approval of the Ontario Municipal Board for a waiver of the vote of the electors.

It should be noted that where a money by-law is assented to by a vote of the electors, its effective date is two weeks after it is passed and it must be passed within six weeks of the vote.

After these procedural requirements have been successfully cleared, a by-law may be attacked on the basis that some or all of its provisions are illegal or invalid, or both. Section 283 of The Municipal Act allows a resident or any other person to apply to the Supreme Court to quash a by-law and have it declared invalid [except money by-law under section 300.] The time limit for making application for most quashing actions is one year after the by-law is passed (section 286, The Municipal Act). In certain cases, however, the time limitations may vary, viz.:

- | | | |
|-----|--|---|
| (a) | By-laws under The Expropriations Act: (section 44) | -- one month from date of "action", where not illegal |
| (b) | By-laws requiring assent of electors where vote not held and waiver of vote not made by O.M.B. (Municipal Act, section 286) | -- no time limit |
| (c) | Drainage Act, 1975 money by-law registered within four weeks of its passing or before debentures are sold (Municipal Act, section 300) | -- one month from date of registration |
| (d) | Local Improvement Act money by-laws registered within four weeks of its passing or before debentures are sold (Municipal Act, section 300) | -- one month from date of registration |
| (e) | General money by-law registered within four weeks of its passing or before debentures are sold (Municipal Act, section 300) | -- three months from date of registration |

- (f) Where a money by-law has not complied with the provisions of section 288(1,3) of The Municipal Act -- no time limit
- (g) Where a by-law that has received the assent of the electors has been promulgated pursuant to section 281(3) to the extent that the subject matter is within the jurisdiction of the council. -- three months from the date of first publication.

Recording, Registration and Promulgation

It is the clerk's duty, as set out in section 215(1) (e) of The Municipal Act:

"to keep in his office or in the place appointed for that purpose the originals of all by-laws ..."

In addition, the clerk is required by law to catalogue any by-law that affects land or land use. Section 216(2) of the Act provides that the clerk must have an index book in which are entered the numbers and dates of such by-laws. Obviously this is a bare minimum and it would be more helpful to ratepayers and others if "duplicate originals" of the relevant by-laws are also displayed in such a book.

Section 1(c) of The Registry Act provides that any municipal by-law that affects land in any way may be registered as an instrument and sections 23(1), 25(1) and 69(3) of that Act exempt by-laws from certain general restrictions applicable to registered instruments. Money by-laws are deemed to be eligible for registration since they establish an obligation that is a charge upon lands.

It is a reasonable practice to register all major money by-laws (using the provisions of section 300 of The Municipal Act) and all by-laws affecting the title to or use of land. Some by-laws must be registered: by-laws authorizing the purchase or sale of property; by-laws passed under sections 32 and 33 of The Drainage Act, 1975; by-laws passed under The Municipal Act, where provided (e.g. sections 354(1) p.97(a), 362a(7), 410(2), 443(9), et cetera). Other by-laws are not required by statute to be registered but, nonetheless, may be registered: by-laws authorizing and attaching subdivision agreements; any by-laws the clerk is required to record in his index book pursuant to section 216(2) of The Municipal Act; local improvement and drainage by-laws; et cetera.

The clerk may also wish to avail himself of the power to register certain by-laws for reasons of security or for protection against later allegations that a by-law has been tampered with.

Section 281 of The Municipal Act provides for the "promulgation" of a by-law passed by council. This device was originally designed to ensure that all inhabitants were aware of the new by-law and to set in motion a period limiting the time during which an application to quash might be launched. Using Form 28 of the Act, promulgation consists of publishing a by-law or synopsis of a by-law once a week for three successive weeks. Promulgation is generally associated with money by-laws.

Format Considerations

The head of council and the clerk are required to sign the original copy of the by-law and the seal is to be affixed thereafter. These points were made earlier. The relevant legislation is contained in section 259 of The Municipal Act.

It is a good practice to make a working copy of each original by-law for purposes of preparing certified copies or for reference purposes. This ensures that original by-laws are secure and not subject to regular handling.

It is also a good practice to index by-laws fully and to review by-laws periodically for purposes of consolidation, updating and repeal.

Finally, recognizing that by-laws are laws and therefore significant documents, some attention should be given to "cosmetic" considerations. Where samples or form by-laws are used, they should be re-typed to correspond to the format normally employed in the municipality. Both the use of quality-bond, legal-sized paper and the affixing of the municipality's seal upon a blank red legal seal contribute to enhancing the appearance of documents which may be retained for a century or more. For this reason, extensive corrections, hand-written alterations and photocopy originals are to be discouraged. The latter particularly can be a problem in view of photo-image deterioration over a period of years.

* * * * *

This paper has attempted to review the basic points to be borne in mind in preparing by-laws. It is hoped that, with the co-operation of the municipal solicitor, his or her stenographic staff and the members of council, the clerk will be able to carry out this most important of clerk's duties with skill and effectiveness.

Anyone who would like to study the legal problems surrounding the passage of by-laws will find the following publication a good starting point:

Rogers Law of Canadian Municipal
Corporations
Published by Carswell
2330 Midland Avenue
Agincourt, Ontario
MLS 1P7

Do you want more information on this subject? Ask any of the field officers of the Local Government Division. They are located at these addresses:

OTTAWA

244 Rideau Street
Ottawa, Ontario
K1N 5Y3
(613) 232-9446

SUDBURY

1349 Lasalle Boulevard
Sudbury, Ontario
P3A 1Z2
(705) 566-0901

THUNDER BAY

435 James Street South
P.O. Box 5000
Thunder Bay, Ontario
P7C 5G6
(807) 475-1621

LONDON

495 Richmond Street
London, Ontario
N6A 5A9
(519) 438-7255

ORILLIA

15B Matchedash Street North
Orillia, Ontario
L3V 4T4
(705) 325-6144

Additional copies of this bulletin are available at \$0.50 per copy, prepaid, from:

Ontario Government Bookstore
880 Bay Street
Toronto, Ontario
M7A 1N8

Please make cheques payable to the Treasurer of Ontario.

